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HIGH COURT
GANGTOK

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No. 26/HCS

NOTIFICATION

SIKKIM SUBORDINATE COURTS CIVIL PROCEDURE MEDIATION RULES, 2006.

In exercise of the powers conferred by section 7 (iii) of the High Court of Judicature (Jurisdiction and Powers) Proclamation of 1955 as amended by the Adaptation of Sikkim Law (No.1) order 1975 and in exercise of the power conferred by Part X of the Code of Civil Procedure 1908, (5 of 1908) and all other enabling powers, the High Court of Sikkim, makes the following Civil Procedure Mediation Rules 2006, for the Subordinate Courts of Sikkim.

1. **Short title and commencement :**

(a) These rules shall be called the Sikkim Subordinate Courts Civil Procedure Mediation Rules, 2006.
(b) They shall come into force on the date of their publication in the official gazette.

2. **Appointment of mediator :**

(a) Parties to a suit may all agree on the name of the sole mediator for mediating between them.

(b) Where, there are two sets of parties and are unable to agree on a sole mediator, each set of parties shall nominate a mediator.

(c) Where parties agree on a sole mediator under clause (a) or where parties nominate more than one mediator under clause (b) the mediator
need not necessarily be from the panel of mediators referred to in Rule 3 nor bear the qualifications referred to in Rule 4 but should not be a person who suffers from the disqualifications referred to in Rule 5.

(d) Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole Mediator and failing unanimity in that behalf, the Court shall appoint a sole mediator.

3: **Panel of mediators :**

(a) The Courts of the District and Sessions Judge (East & North) Sikkim at Gangtok, District & Sessions Judge (South & West) Sikkim at Namchi, District & Sessions Judge (Special Division-I) at Gangtok, District & Sessions Judge (Special Division-II) at Gangtok, shall for the purposes of appointing mediators to mediate between parties in suits filed on their original side, prepare a
panel of mediators, within a period of sixty days of the commencement of these Rules, after obtaining the approval of the High Court to the names included in the panel, and shall publish the same on their respective Notice Board.

(b) Copies of the said panels referred to in clause (a) shall be forwarded to all the Courts of equivalent jurisdiction subordinate to the Courts referred to in clause (a) and to the Bar Associations attached to each of the Courts:

(c) The consent of the persons whose names are included in the panel shall be obtained before empanelling them.

(d) The panel of names shall contain a detailed Annexure giving details of the qualifications of the mediators and their professional or technical experience in different fields.

4. **Qualifications of persons to be empanelled under Rule 3.**

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 3, namely:

(a) Retired District and Sessions Judges or Judicial Officers of Courts of equivalent status.
(b) Retired Chief Judicial Magistrate-cum- Civil Judges.
(c) Legal practitioners with at least fifteen Years standing at the Bar at the level of the Supreme Court or the High Court; or the District Courts or Courts of equivalent status.
(d) Experts or other professionals with at least fifteen years standing; or retired senior bureaucrats or retired senior executives;
(e) Institutions which are themselves experts in mediation and have been recognized as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

5. **Disqualifications of persons:**

The following persons shall be deemed to be disqualified for being empanelled as mediators:

(a) any person who has been adjudged as insolvent or is declared of unsound mind;
(b) or any person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending;
(c) any person who has been convicted by a Criminal Court for any offence involving moral turpitude;
(d) any person against whom disciplinary proceedings or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

(e) any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing;

(f) any legal practitioner who has or is appearing for any of the parties in the suit or in any other suit or proceedings;

(g) such other categories of persons as may be notified by the High Court.

6. **Venue for conducting mediation:**

The mediator shall conduct the mediation at one or other of the following places:

(a) Venue of the Lok Adalat or permanent Lok Adalat.

(b) Any place identified by the District Judge within the Court precincts for the purpose of conducting mediation.

(c) Any place identified by the Bar Association or State Bar Council for the purpose of mediation, within the premises of the Bar Association or State Bar Council, as the case may be.

(d) Any other place as may be agreed upon by the parties subject to the approval of the Court.

7. **Preference.**

The Court shall, while nominating any person from the panel of mediators referred to in Rule 3, consider his suitability for resolving the particular class of dispute involved in the suit and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

8. **Duty of mediator to disclose certain facts:**

(a) When a person is approached in connection with his possible appointment as a Mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(b) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay, disclose to the parties in writing, about the existence of any of the circumstances referred to in clause (a).

9: **Cancellation of appointment:**

Upon information furnished by the mediator under Rule 8 or upon any other information received from the parties or other persons, if the Court, in which the suit is filed, is satisfied, after conducting such inquiry as it deems fit, and after giving a hearing to the mediator, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, it shall cancel the appointment by a reasoned order and replace him by another mediator.

10. Removal or deletion from panel.

A person whose name is placed in the panel referred to in Rule 3 may be removed or his name be deleted from the said panel, by the Court which empanelled him, if :

(a) he resigns or withdraws his name from the panel for any reason.

(b) he is declared insolvent or is declared of unsound mind;

(c) he is a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;

(d) he is a person who has been convicted by a criminal court for any offence involving moral turpitude;

(e) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment;

(f) he exhibits or displays conduct, which is unbecoming of a mediator during the continuance of the mediation proceedings.

(g) The Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel,

Provided that, before removing or deleting his name, under clause (vi) and (vii), the Court shall hear the mediator whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

11. Procedure of mediation.

(a) The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely :

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;

(ii) he shall hold the mediation conference in accordance with the provisions of Rule 6;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;

(v) each party shall furnish to the mediator, copies of pleadings or documents or such other information as may be required by him in connection with the issues to be resolved.

Provided that where the mediator is of the opinion that he should look into any original document, the Court may permit him to look into the original document before such Officer of the Court and on such date or time as the Court may fix;

(vi) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.

12. Mediator no bound by Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator shall not be bound by the Code of Civil Procedure 1908 or the Evidence Act, 1872, but shall be guided by principles of fairness and justice have regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

13. Non attendance of parties at sessions or meetings on due dates.

(a) The parties shall be present personally or may be represented by their Counsel or Power of Attorney holders at the meetings or sessions notified by the mediator.

(b) If a party fails to attend a session or a meeting notified by the mediator, other parties or the mediator can apply to the Court in which the suit is filed, to issue appropriate directions to that party to attend before the mediator and if the Court finds that a party is absenting himself before the mediator without sufficient reason, the Court may take action against the said party by imposition of costs.

(c) The parties not resident in India, may be represented by their Counsel or power of attorney holders at the sessions or meetings.

14. Administrative assistance.

In order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

15. Offer of settlement by parties :

(a) Any party to the suit may, without prejudice, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(b) Any party to the suit may make a, 'without prejudice' offer, to the other party at any stage of the proceedings, with notice to the mediator.

16. Role of mediator:

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which affect them; he shall not impose any terms of settlement on the parties.

17. **Parties alone responsible for taking decision :**

The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

18. Time limit for completion of mediation :

On the expiry of sixty days from the date fixed for the first appearance of the parties before the mediator if no decision is arrived at between the parties the mediation shall stand terminated, unless the Court, which referred the matter, either suo moto, or upon request by the mediator or any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

19. **Parties to act in good faith :**

While no one can be compelled to commit to settle his case by way of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute, if possible.

20 **Confidentiality, disclosure and inadmissibility of information :**

(a) When a mediator receives confidential information concerning the dispute from any party, he shall disclose the substance of that information to the other party, if permitted in writing by the first party.

(b) When a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party, nor shall the mediator voluntarily divulge any information regarding the documents or what is conveyed to him orally as to what transpired during the mediation.

(c) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpired during the mediation.

(d) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to :

(i) views expressed by a party in the course of the mediation proceedings;
(ii) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
(iii) proposals made or views expressed by the mediator;
(iv) admission made by a party in the course of mediation proceedings;
(v) the fact that a party had or had not indicated willingness to accept a proposal.

(5) There shall be no stenographic or audio or video recording of the mediation proceedings.

21. **Privacy**

Mediation sessions and meetings are private; only the concerned parties or their Counsel or power of attorney holders can attend. Other persons may attend only with the permission of the parties or with the consent of the mediator.

22. Immunity :

No mediator shall be held liable for anything bonafide done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

23. Communication between mediator and the Court.

(a) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the Court, except as stated in clauses (b) and (c) of this Rule.

(b) If any communication between the mediator and the Court is necessary, it shall be in writing and copies of the same shall be given to the parties or their Counsel or power of attorney holder.

(c) Communication between the mediator and the Court shall be limited to communication by the mediator :

(i) with the Court about the failure of any party to attend;

(ii) with the Court with the consent of the parties;

(iii) regarding his assessment that the case is not suited for settlement through mediation;

(iv) that the parties have settled the dispute or disputes.

24. Settlement Agreement:

(a) Where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel has represented the parties, they shall attest the signature of their respective clients.

(b) The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending.

(c) Where no agreement is arrived at between the parties, before the time limit stated in Rule 18 or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

25. Court to fix a date for recording settlement and passing decree :

(a) Within seven days of the receipt of any settlement, the Court shall issue notice to the parties fixing a day for recording the settlement, such date not being beyond a further period of fourteen days from the date of receipt of settlement, and the Court shall record the settlement, if it is not collusive.

(b) The Court shall then pass a decree in accordance with the settlement so recorded, if the settlement disposes of all the issues in the suit.

(c) If the settlement disposes of only certain issues arising in the suit, the Court shall record the settlement on the date fixed for recording the settlement and (i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straight away in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled.

(d) If the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

26 : Fee of mediator and costs :

(a) At the time of referring the disputes to mediation, the Court shall, after consulting the mediator and the parties, fix the fee of the mediator.

(b) As far as possible a consolidated sum may be fixed rather than for each session or meeting.

(c) Where there are two mediators as in clause (b) of Rule 2, the Court shall fix the fee payable to the mediators which shall be shared equally by the two sets of parties.

(d) The expense of the mediation including the fee of the mediator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Court.

(e) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(f) The mediator may, before the commencement of mediation, direct the parties to deposit equal sums, tentatively, to the extent of 40% of the probable costs of the mediation, as referred to in clauses (1), (3) and (4). The remaining 60% shall be deposited with the mediator, after the conclusion of mediation. For the amount of cost paid to the mediator, he shall issue the necessary receipts and a statement of account shall be filed, by the mediator in the Court.

(g) The expense of mediation including fee, if not paid by the parties, the Court shall, on the application of the mediator or parties, direct the concerned parties to pay, and if they do not pay, the Court shall recover the said amounts as if there was a decree for the said amount.

(h) Where a party is entitled to legal aid under section 12 of the Legal Services Authority Act, 1987, the amount of fee payable to the mediator and costs shall be paid by the concerned Legal Services Authority under that Act.

27. Ethics to be followed by mediator :

The mediator shall :

(a) follow and observe these Rules strictly and with due diligence;

(b) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator;

(c) uphold the integrity and fairness of the mediation process;

(d) ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process ;

(e) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

(g) avoid, while communicating with the parties, any impropriety or appearance of impropriety ;

(h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator;

(i) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law ;

(j) recognize that mediation is based on principles of self-determination by the parties and that mediation process relies upon the ability of parties to reach a voluntary, undisputed agreement;

(k) maintain the reasonably expectations of the parties as to confidentiality;

(l) refrain from promises or guarantees of results.

28. <u>Transitory provisions</u> :

Until a panel of Mediator is prepared by the District Court, the Courts referred to in Rule 3, may nominate a mediator of their choice if the mediator belongs to the various classes of persons referred to in Rule 4 and is duly qualified and is not disqualified, taking into account the suitability of the mediator for resolving the particular dispute.

S.W. Lepcha
REGISTRAR GENERAL